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ments . . . should continue the same as long as his membership continued." The contract also incorporated the by-laws which provided for amendment and also for changes in the rate of assessment. Upon the association raising the rates he brings suit for breach of contract. *Held*, that such a raise was in the contemplation of the parties. *Supreme Lodge, Knights of Pythias v. Mims*, Sup. Ct. Off., No. 345.

It has been thought that decisions upon the right of benefit societies to amend its by-laws so as to affect the amount payable upon insurance policies were in hopeless conflict, not only between jurisdictions, but also within them. Some states allow no such amendments. *Wright v. Knights of Maccabees*, 95 N. Y. Supp. 996; *Covenant Mutual Life Ass'n v. Tuttle*, 87 Ill. App. 309; *Pearson v. Knight Templars & M. Indemnity Co.*, 114 Mo. App. 283, 89 S. W. 588. But the principle of the present case — that due to the fraternal nature of the order, the "risk of events," and such sacrifices as the success of the scheme might naturally demand were within the contemplation of the parties — seems to reconcile the decisions among those jurisdictions which do allow some changes. Thus increased assessments, even though they become prohibitive, are within the contemplated risk of events. *Gant v. Mutual Reserve Fund Life Ass'n*, 121 Fed. 403. But placing all members over a given age in a class by themselves and raising their assessments until they support their own insurance is not. *Ebert v. Mutual Reserve Fund Life Ass'n*, 81 Minn. 116, 83 N. W. 506, 834. *Straus v. Mutual Reserve Fund Life Ass'n*, 128 N. C. 465, 39 S. E. 55. Whereas a reassignment of all members into classes, though it may raise assessments, is a reasonable sacrifice. *Reynolds v. Supreme Council of the Royal Arcanum*, 192 Mass. 150, 78 N. E. 129.

INTERNATIONAL LAW — ENGLISH PRIZE COURTS — DUTY TO OBEY ORDERS IN COUNCIL. — The *Zamora*, a neutral ship, was seized by a British cruiser as a prize. During condemnation proceedings instituted in the Prize Court because of the contraband character of the cargo (copper), the Court acting under Order XXIX, Rule I, of the Prize Court Rules, applied to the Court for an interlocutory order that a part of the cargo be delivered to the Crown. The Prize Court so decreed and the owner of the vessel appealed to the Privy Council. *Held*, that the decree should not have been made. *The Zamora*, 32 T. L. R. 436 (Privy Council).

For discussion of the principles involved, see NOTES, p. 66.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — JUDGMENT ON INTERPLEADER BY GARNISHEE AS BAR TO ACTION BY JUDGMENT CREDITOR AGAINST GARNISHEE. — One Gould became entitled to the surrender value of an insurance policy; later a judgment creditor of one Dunlevy, without serving Dunlevy, a non-resident, garnished Gould and the insurance company, alleging that Gould had assigned his interest to Dunlevy. The company interpleaded. Notice was given to Dunlevy but she did not appear. The court found that there was no assignment by Gould to Dunlevy and ordered payment to be made by the company to Gould. This was done. Dunlevy now brings an action in another state against the company for the value of the policy. *Held*, that she may recover. *N. Y. Life Ins. Co. v. Dunlevy*, 36 Sup. Ct. Rep. 613.

Garnishment is, as against the principal debtor, an action *quasi in rem*. Hence no personal judgment or decree can be given against a non-resident debtor who was not personally served. See 2 SHINN, ATTACHMENT AND GARNISHMENT, § 607. Consequently, where without service on the principal debtor judgment is rendered in favor of the garnishee on grounds that the garnishee owes no debt, the principal debtor may nevertheless bring an action against the garnishee. *Ruff v. Ruff*, 85 Pa. St. 333. See *Puffer v. Graves*, 26 N. H. 256. See 2 SHINN, ATTACHMENT AND GARNISHMENT, § 725. A judgment on an inter-

pleader filed by the garnishee can certainly be no more binding on the unserved debtor than a judgment in the garnishment suit. The principal case, therefore, seems clearly right. The result that the company must pay twice is harsh. But the situation is the same in any case where a debtor successively sued on one claim by two claimants in different jurisdictions is unable to serve both in any one jurisdiction. The better course for the debtor in such a case and for the defendant in the principal case would seem to be, not to interplead but to defend each action as it is brought.

LAW AND FACT — PROVINCES OF COURT AND JURY — COMPETENCY OF WITNESSES DEPENDING ON THE MAIN ISSUE. — In a prosecution for perjury it was alleged that the defendant previously had brought a suit for divorce in Texas; that he had in that suit sworn, in order to give the court jurisdiction, that he had been resident in Texas for twelve months; and that he had not, in fact, been so resident. The divorce was granted in the prior suit. The wife was offered by the state as witness for the prosecution. The court, after viewing the former divorce decree, permitted the wife to testify. *Held*, that there was no error. *Laird v. State*, 184 S. W. 810 (Texas).

The general rule that preliminary questions of fact are for the judge is no longer questioned. But the authorities are in conflict when the preliminary question of fact is also the main issue. Thus some courts hold that such circumstance should not prevent the court from passing on the question. *State v. Lee*, 127 La. 1077, 54 So. 356; *Hichins v. Eardley*, L. R. 2 P. & D. 248; *Doe v. Davies*, 10 Q. B. 314. Others, however, allow the question of admissibility to go to the jury, with instructions altogether to disregard the evidence if it is proved inadmissible. *Respublica v. Hevice*, 3 Wheeler Cr. Cas. 505 (Pa.); *Stowe v. Querner*, L. R. 5 Ex. 155. There seems to be no reason for departing from the general rule. The decision of the ultimate issue is, after all, still with the jury; and any undue influence, consequent upon the expression of the court's opinion, can be averted by having the jury retire during the determination of the question. The principal case, however, presents a novel problem. In objecting to the testimony of the witness, on the ground that she is his wife, the defendant is inconsistent both with his position in the former divorce suit and with his position as to the main issue in the present trial. As regards the first inconsistency, the law appears to be that a collateral attack on a judgment for want of jurisdiction of a party thereto can only be made by one not a party to the judgment. *Heffron v. Cunningham*, 76 Texas 312, 13 S. W. 259; *cf. Valentine v. McGrath*, 52 Miss. 112. But it would seem as if the defendant's attitude in this trial must also bar his objections. For by proving the preliminary fact, that she is still his wife, he is confessing the main issue, that he committed perjury and the divorce decree was void. The state is saved from an equally anomalous position by the fact that the burden of proof in a preliminary question of fact is upon the objecting party. For all relevant evidence is *prima facie* admissible. See J. B. Thayer, "Presumptions and the Law of Evidence," 3 HARV. L. REV. 141, 144. Thus the state is simply objecting to the defendant's position. It is submitted that the defendant should be prevented from assuming such inconsistent attitudes in the same trial, by something akin to estoppel.

LIBEL AND SLANDER — DAMAGES — LIABILITY FOR UNAUTHORIZED REPETITION. — Defendant slandered the plaintiff by words actionable *per se*. The trial judge refused to instruct the jury that in assessing damages unauthorized repetitions by third parties were not to be considered. *Held*, that this was not error. *Southwestern Telegraph and Telephone Co. v. Long*, 183 S. W. 421 (Texas).

It is a well-established rule that the publisher of slander is not liable for its unauthorized repetition. *Dixon v. Smith*, 5 H. & N. 450; *Cates v. Kellogg*, 9 Ind. 506; *Shurtleff v. Baker*, 130 Mass. 293. See *Schoepflin v. Coffey*, 162 N. Y.